HAJI KAMALUDIN B. ABDUL KADIR

v.

THE PUBLIC PROSECUTOR

HIGH COURT SABAH & SARAWAK, SIBU
TUAN STEVE L.K. SHIM J
[CRIMINAL APPEAL NO. 22 OF 1994]
15 JULY 1995

CRIMINAL PROCEDURE: *Charges - Driving a vehicle at a speed exceeding the limit set by National Speed Limit Order 1988 - Offence under s. 119(1)(c) Road Transport Act 1987 - Charge cited s. 69(1) as section under which offence was committed - Whether fatally defective - Whether trial vitiated - Criminal Procedure Code s. 422.*

ROAD TRAFFIC: *Driving a vehicle at a speed exceeding the limit set by National Speed Limit Order 1988 - Applicability of Order - Whether applicable only to federal roads - Whether applicable to all roads in Malaysia - National Speed Limit Order 1988 para. 2(1) - Road Transport Act 1987 s. 69(2) & (3).*

The appellant was convicted by the learned Magistrate of an offence of driving a vehicle at a speed that exceeded the 90 kilometres per hour limit, set by the National Speed Limit Order 1988. The facts showed that at about 3.42 p.m, on 10 August 1993, the appellant was driving along one Jalan Bulat, Sarikei, State of Sarawak, at a speed of 112 kilometres per hour. The appellant appealed against the conviction and argued (1) that the charge preferred against him, having adverted to s. 69(1) of the Road Transport Act 1987, was defective as that section, prior to its amendment in 1994, did not create any offence (2) that the said road was a duly gazetted federal road, and (3) that there was no speed limit imposed along the said road as no speed limit sign had been erected thereat. It was not in dispute that the offence in question was an offence under s. 119(1)(c) of the Road Transport Act 1987, and not one under s. 69(1) as cited in the charge.

Before the learned Judge the primary issue that arose was whether, in the circumstances, the omission to mention s. 119(1)(c) in the charge made the charge fatally defective, or whether it was only an irregularity that did not vitiate the trial.

Held:

[1] The National Speed Limit Order must be construed as a provision of the Road Transport Act 1987. Contravention of such provision, in the absence of anything to the contrary expressed in the said Act, would therefore be an offence under s. 119(1)(c) of the same Act and punishable under s. 119(2) thereof.

[2] The thrust of the charge against the appellant that he had, at the place, date and time specified therein, exceeded the speed limit prescribed in the National Speed Limit Order 1988, was clear and simple. The whole of the evidence adduced by the prosecution was centred upon that premise and the appellant was clearly not in any way misled. In the circumstances, although the charge against the appellant does not mention s. 119(1)(c), the omission, being purely technical, is only an irregularity. It follows that the omission, having occasioned no failure of justice, did not vitiate the appellant's trial.

[3] By virtue of paragraph 2(1), National Speed Limit Order 1988, the imposition of 90 kilometres per hour limit under the Order must be construed to cover all roads in Malaysia, except those listed in the Schedule under paragraph 2(2) of the Order and those falling within the provisions of s. 69(2) & (3) of the Road Transport Act 1987. There is

nothing to indicate that the road mentioned in the charge, namely, Jalan Bulat, Sarikei, falls within the exceptions aforesaid. It is therefore covered by paragraph 2(1) of the 1988 Order in which the speed limit prescribed is 90 kilometres per hour.

[4] With the exception of s. 69(2) & (3) of the Act, there is nothing to indicate that in respect of the roads referred to in paragraph 2(1) of the 1988 Order, the authorities concerned shall be required to erect and maintain traffic signs or speed limit signs along such roads.

[Appeal dismissed].

Legislation referred to:
National Speed Limit Order 1988, para. 2(1)
Road Transport Act 1987, ss. 69(1), (2), (3), 119, (1)(c), (2)
Road Transport (Amendment) Act, 1994, s. 24

For the appellant - Wong Sing Nang; M/s. Wong Orlando Chua & Co.
For the respondent - Nik Suhaimi bin Nik Sulaiman; DPP

JUDGMENT

Steve L. K. Shim J:

This is an appeal by Haji Kamaludin bin Abdul Kadir (the appellant) against the decision of the Magistrate's Court made on 10 January 1994 wherein the appellant was convicted under s. 69(1) read with s. 119(2) of the Road Transport Act 1987, (the Act). The charge reads as follows:

> That you, on 10 August 1993 at about 3.42 p.m. at Batu 121½ Jalan Bulat, Sarikei, in the State of Sarawak, being the driver of a motor vehicle, to wit, a motor-car bearing registration plate no. KS 1776Q and did drive the said vehicle with a speed 112km per hour in which exceeding the National Speed Limit Order 1989 and thereby committed an offence under s. 69(1) of the Road Transport Act, 1987 and punishable under s. 119(2) of the same Act.

At the outset Mr. Wong Sing Nang Counsel for the appellant has raised an issue which is clearly not propagated as a ground in the petition of appeal. However, notwithstanding the omission, I think I should deal with it as it is of some importance. He submits that the charge is defective as s. 69(1) of the Act did not, prior to its amendment, constitute or create any offence. The relevant amendment has been gazetted and published under the Road Transport (Amendment) Act, 1994 and s. 24 therein states:

> Section 69 of the principal Act is amended by inserting after subsection (1) the following subsection:
>
> (1A) Any person who fails to observe the national speed limit prescribed under subsection (1) shall be guilty of an offence.

Mr. Wong has contended that as the charge in this case related to an offence allegedly committed prior to the amendment aforesaid, the said charge must be regarded as defective; that on that basis; the conviction should be quashed and the sentence imposed by the Magistrate's Court be set aside. The learned DPP has however submitted otherwise. He contends in effect that where there was contravention of s. 69(1) of the Act, an offence would have been committed by virtue of the provisions in s. 119(1)(c) of the said Act.

I think it is important to examine more closely the provisions of s. 69(1) which stipulates:

> The Minister may, by order published in the Gazette, prescribe a national speed limit for all roads in Malaysia.

Quite obviously s. 69(1) is an enabling provision. It enables or empowers the Minister to prescribe a national speed limit for all roads in Malaysia. This has to be done by order published in the Gazette. In this case, the Minister of Transport had prescribed the relevant speed limit which had been gazetted as the National Speed Limit Order 1988, effective from 1 February 1989. In that context, the said National Speed Limit Order must be construed as a provision of the Road Transport Act, 1987. And contravention of such provision should, in the absence of anything to the contrary expressed in the said Act, fall under s. 119(1)(c) of the same Act punishable under s. 119(2) thereof. In the instant case, the charge preferred against the appellant does not mention s. 119(1)(c) but I think the omission is merely an irregularity. It is purely technical. The thrust of the charge is clear and simple, i.e. that the appellant had, at the place, date and time specified therein, exceeded the speed limit as prescribed in the National Speed Limit Order 1988. The whole of the evidence adduced by the prosecution is centred upon that premise. The appellant has therefore not been misled in any way. In my view, the omission or irregularity, in all the circumstances, does not vitiate the proceedings.

For the reasons given, I hold that there is no merit in the contention of Mr. Wong. The omission to cite s. 119(1)(c) in the charge is a mere irregularity which has not occasioned any failure of justice. In holding this, I bear in mind the provisions of s. 422 of the Criminal Procedure Code.

I now turn to the grounds of appeal, namely, (1) that the learned Magistrate erred in holding that the road on which the appellant was travelling at the material time was a federal road duly gazetted and (2) that the learned Magistrate erred in holding there was imposition of a speed limit along the said road when there was no speed limit sign erected thereat.

Mr. Wong for the appellant has not submitted on these grounds. As such I would be entitled to assume that he has abandoned them. However, on the assumption that he has not, let me deal with them herein. On the first ground, I need not say much except that I think it is misconceived because the learned Magistrate had made no such finding as alleged. That ground therefore has no merit whatsoever. Now, as regards the second ground; here I think that the provisions stipulated in the National Speed Limit Order 1988 are significant, especially paragraph 2(1) therein which states:

> The speed limit for all roads in Malaysia, other than the roads described in the Schedule, shall be 90 kilometres per hour.

Reading this paragraph in its natural context, it must be construed as applying to all roads in Malaysia whether they be federal roads or state roads. There are of course certain types of roads as described in the Schedule where the speed limit is provided differently. This is reflected in paragraph 2(2) of the said 1988 Order which states:

> The speed limit for the roads described in the Schedule shall be 110 kilometres per hour.

Under this Schedule are listed the names of the roads affected. It is perhaps to be noted that s. 69(2) provides the Minister responsible for works (as opposed to the Minister responsible for transport) on federal roads and the appropriate bodies in relation to other types of roads, with the authority, by order to be gazetted, to prescribe different speed limits for the roads in question provided such speed limits do not, in any event, exceed that of the national speed limit. In this case the national speed limit as prescribed in the 1988 Order is 90 kilometres per hour. And s. 69(2) of the Act provides that so long as the order made under s. 69(2) aforesaid, remains in force, the Director General of Public Works and the relevant authorities or bodies, shall cause the appropriate traffic signs to

be erected and maintained at such positions along the roads concerned so as to give adequate notice of the prohibition to drivers of motor-vehicles thereat.

As I have indicated, the imposition of 90 kilometres per hour under the National Speed Limit Order, 1988, must be construed to cover all roads in Malaysia except those listed in the schedule under paragraph 2(2) of the Order and those falling within the provisions of s. 69(2) and (3) of the Road Transport Act, 1987. Here, there is nothing to indicate or suggest that the road mentioned in the charge, namely, Jalan Bulat, Sarikei, falls within the exceptions aforesaid. It is therefore covered by paragraph 2(1) of the 1988 Order in which the speed limit prescribed therein is 90 kilometres per hour. With the exception of s. 69(2) and (3) of the Act, there is nothing to indicate or suggest that in respect of the roads referred to in paragraph 2(1) of the 1988 Order, the authorities concerned shall be required to erect and maintain traffic signs or speed limit signs along such roads. There is nothing obligatory on the part of the authorities concerned.

In the circumstances and for the reasons given, the second ground of appeal must fail. This appeal is hereby dismissed.